IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 5508 of 2005(E)

PETITIONER:

KUNJUPENNU KARTHIYANI,
W/O.LATE K.LEKSHMANAN, MADHRURPPALLIL,
PRAYAR SOUTH, ALUMPEEDIKA P.O., OACHIRA, KOLLAM.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.M.R.SABU
SMT.R.RANJINI

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE**
   CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **DISTRICT COLLECTOR,**
   COLLECTORATE, KOLLAM.

3. **UNION OF INDIA, REP. BY SECRETARY TO**
   GOVERNMENT OF INDIA, HOME AFFAIRS,
   GIRISH MANTRALAYM, NEW DELHI.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.5508/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.R.DIS. 4433/99/N2 DT. 24.4.99 ISSUED BY 2ND RESPONDENT.

EXT.P2:- COPY OF THE APPLICATION DT. 29.7.2000 BY PETITIONER'S HUSBAND.

EXT.P3:- COPY OF THE CO-PRISONER CERTIFICATE DT. 5.4.98 ISSUED BY SRI.UMMINI RAGHAVAN TO PETITIONER'S HUSBAND.

EXT.P4:- COPY OF THE CO-PRISONERS CERTIFICATE DT. 5.4.98 BY SRI.K.GOPINATHAN TO PETITIONER'S HUSBAND.

EXT.P5:- COPY OF THE ORDER (NARC) DT. 13.7.2000 ISSUED FROM JUDL.IST CLASS MAGISTRATE COUR, KARUNAGAPPALLY.

EXT.P6:- COPY OF THE MINUTES DT. 16.7.01 BY 2ND RESPONDENT.

EXT.P7:- COPY OF THE CERTIFICATE (AFFIDAVIT) DT. 7.96 SIGNED BY JUDL.IST CLASS MAGISTRATE COURT, KARUNAGAPPALLY.

EXT.P8:- COPY OF THE LETTER NO.N2.51249/2000 DT./ 16.10.02 BY 2ND RESPONDENT TO PETITIONER'S HUSBAND.

EXT.P9:- COPY OF THE LETTER DT. 10.5.03 BY PETITIONERS HUSBAND TO CHIEF SECRETARY.

EXT.P10:- COPY OF THE DEATH CERTIFICATE OF PETITIONER'S HUSBAND DT. 14.10.2000.

EXT.P11:- COPY OF THE LETTER DT. 25.9.04 BY PETITIONER TO 2ND RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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W.P.(C).No. 5508 of 2005 (E)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 26th day of July, 2007

J U D G M E N T

The petitioner's husband sought for a grant of Central Freedom Fighters Pension under the Swatantrata Sainik Samman Pension Scheme. The petitioner's husband was a prominent freedom fighter, who had participated in the freedom struggle. He was an accused in C.C.No.36/1114 of the Judicial First Class Magistrate Court, Karunagappally. He had undergone imprisonment for eight months from 12th Meenum 1114 to 17th Vrischikam 1115. The petitioner's husband was granted the State Freedom Fighters Pension as evidenced by Ext.P1. A reading of Ext.P1 shows that as per government letter dated 20/01/1999, the Government had directed the District Collector, Kollam to sanction the said pension to the petitioner's husband. Ext.P2 is the application for the benefit under the Swatantrata Sainik Samman Pension Scheme. The petitioner has produced Exts.P3 and P4, the certificates issued by two prominent freedom fighters M/s.Ummini Raghavan and K.Gopinathan. In the above certificates it has been clearly

certified that they are recipients of Central Freedom Fighters Pension and as far as Sri Ummini Raghavan is concerned, he has suffered imprisonment for more than five years in the freedom struggle and was lodged in Central Jail, Thiruvananthapuram as convict No.1125 and in Kottarakkara and Kollam Kasba police lock up etc.. As regards Sri.K.Gopinathan, he has suffered actual imprisonment for more than two years in the freedom struggle and was lodged in Karunagappaly and Kollam Kasba police station, Thiruvananthapuram Central Jail etc. Both of them certified that Sri K.Lekshmanan, the deceased husband of the petitioner is a bona fide freedom fighter who was also imprisoned on account of participation in the movement during the freedom struggle and was lodged in the same jail along with them during the period from 1114 Meenam 12 to 1115 Vrischikam 17. Ext.P5 and the endorsement therein will show that even though the petitioner sought for the records from the Judicial First Class Magistrate Court, Karunagappally, no such records in C.C.No.36/1114 was available. The petitioner has produced Ext.P6, which is the recommendation of the District Advisory Committee, dated 16/07/2001, for the grant of Central

Pension to the petitioner's husband. It has been clearly reported therein that pursuant to the enquiry conducted to the Karunagappally Tahsildar, it is known that the petitioners husband was a participant in the freedom struggle and that he had participated in the attack to the police station and that he had gone underground and had suffered imprisonment. The Advisory Committee's proceedings will show that they have considered a number of materials including Exts.P3 and P4.

2. Inspite of the above, the District Collector has chosen to send a reply as per Ext.P8 stating that he should produce certificates showing the imprisonment in jail of the certifiers and also other evidence to prove that the petitioner's husband had suffered incarceration in the jails. Again the petitioner's husband submitted a representation to the Chief Secretary as evidenced by Ext.P9. The petitioner's husband passed away on 19/09/2004. Thereafter, she approached the District Collector with Ext.P11 representation.

3. Aggrieved by the denial of the grant of pension under the Central Scheme, the petitioner has filed this writ petition seeking to quash Ext.P8 and to direct the 2nd respondent to reconsider the claim of Central Pension in the light of the relevant materials.

4. The respondents have filed separate counter affidavits. In the counter affidavit filed on behalf of the first respondent, after referring to the Central Pension scheme, what is stated is that the certificates Exts.P3 and P4 are not acceptable as well as Exts.P5 and P6 also. A reading of the affidavit shows that the objection is taken ignoring the fact that the petitioner's husband was a recipient of pension under the State scheme and that he was a bona fide freedom fighter. Now the approach made by the first respondent appears to be too technical in that rather than deciding on the merits of the matter with reference to the records available, the decision of the District Advisory Committee as well as the sanction of State Pension to the petitioner, again they are harping on the minor defects or technicalities in respect of the other documents. It cannot be

disputed that the petitioner's husband has produced the certificates of Sri.Ummini Raghavan and Sri.K.Gopinathan, well known leaders and freedom fighters, who have actively participated in the freedom movement. It is surprising to note that the first respondent has rejected the certificates without considering the laudable object of the scheme itself. In the counter affidavit filed by the third respondent the salient features of the scheme has been narrated. They have also stated that the application has to be in the prescribed form forwarded through the State Government and they have not received the application of the petitioner.

5. The issue in question, therefore, has to be decided on the basis of relevant materials produced by the petitioner in this case and based on the various decisions concerning the scheme rendered by this Court and Supreme Court. As regards the object of the scheme Their Lordships of the Supreme Court in **Mukundlal Bhandari v.Union of India and Ors. [1993 SCW 2508]** had held that the object was to honour and where it was necessary also to mitigate the sufferings of those who had given

their all for the country in the hour of its need. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. The scheme should retain its high objective with which it was motivated. In **Gurdial Singh vs.Union of India [AIR 2001 SC 3883]**, it was held that:-

> "It should not be forgotten that the persons intended to be covered by the scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme."

The same principle was followed in **Bhaurao Dagdu Paralkar vs.State of Maharashtra [AIR 2005 SC 3330]**, in which Their Lordships held that the genuine freedom fighters deserve to be treated with reverence, respect and honour.

6. In the light of the above principles, the approach made by the first respondent in this case in Ext.P8 does not seem to be correct. The same falls short of the concern required to be shown in such cases, as held by the Hon'ble Supreme Court in the cases noted above.

7. The learned Senior Counsel for the petitioner relied upon the judgment of this Court in O.P.No.11264/2003, O.P.No.3868/2002 as also the decision of a Division Bench of this Court in W.A.No.1448/2003 [2003(3)KLT-Page 157 (SN) Case No.203]. In W.A.No.1448/2003, Their Lordships held that:-

> "Imprisonment as an undertrial also would qualify for S.S.S Pension. Hence in view of the admitted fact that late Ramakrishnan was an undertrial the absence of recommendation by the State Government cannot stand in the way of granting S.S.S Pension to the respondent."

8. O.P.No.11264/2003 was in respect of an application for the freedom fighters pension under the State Scheme. There the application was rejected on the ground that the certificates from

co-prisoners, namely, M/s.K.Gopinathan, P.K.Bhaskaran and Ummini Raghavan, were not acceptable. After referring to the contentions of the respondents, this Court took a view that the certificates given by the co-prisoners, the three certificates filed in support of the application are acceptable certificates for the purpose of granting freedom fighters pension. Of course, it was a decision relating to an application for grant of pension under the Freedom Fighters Pension Scheme of the State. But still the directions therein has relevance in this case also since the certificates in question are the same.

9. In O.P.No.3868/2002, the freedom fighter therein had been granted pension by the State Government. His Lordship was pleased to consider that dispute in the light of the certificates from the co-prisoners as well as in the light of the fact that that State has already granted pension to the applicant therein after referring to the dictum laid down in Gurdial Singhs case cited above and in the light of the fact that the State Government itself had sanctioned pension, this Court was pleased to accept the averments in the original petition relating to the validity of the

claims and directed the respondent to grant freedom fighters pension.

10. In the light of the above principles, Ext.P8 cannot be justified. This is also a case where the late husband of the petitioner was granted pension under the State Scheme, apart from the same, the Advisory Committee has also recommended his case. The two certificates, Exts.P3 and P4, ought to have been accepted along with the N.A.R.C, Ext.P5. The entitlement of the petitioner for pension is well established by the above documents.

11. In Gurdial Singh's case, Their Lordships were pleased to find that:-

> "The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required

> to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

Judged in the light of the above principles, I am of the view that the claim raised by the petitioner has been fully justified. In fact, as far as the scope of judicial review, it is well settled by the decision of the Supreme Court that when there is total non application of mind on the part of the authority, this Court will be jusitified in interfering with the same. In **Cholan Roadways Ltd. vs. G.Thirugnanasambandam [(2005) 3 SCC 241]** their Lordships held in paragraph 35 that errors of fact can also be subject matter of judicial review. Their Lordships of the Supreme Court after referring to the above judgment, held in **S.N.Chandrashekar and another vs. State of Karnataka and others [(2006) 3 SCC 208]** in paragraph 33 as follows:-

> "It is now well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reasons inconsistent, unintelligible or substantially inadequate. (See de Smith's Judicial Review of Administrative Action, 5th Edn.p.286)"

In the light of the above principles also, this Court will be justified in quashing Ext.P8.

Therefore, I declare that the petitioner is entitled for grant of pension under the Central Scheme. There will be a direction to the first and second respondents to forward the application along with due recommendation to the third respondent within a period of two months from the date of receipt of a copy of this judgment. The third respondent is hereby directed to sanction pension in accordance with the scheme within a period of three months from the date of receipt of the recommendation of the State Government and the amounts shall be disbursed also.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR,
Judge

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